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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



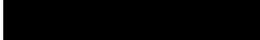
U.S. Citizenship  
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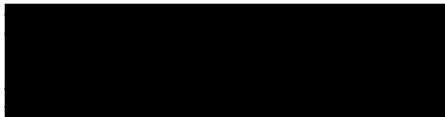
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DATE: **MAY 31 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:   


IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a [REDACTED] corporation that conducts business in the United States as a branch office. The petitioner seeks to employ the beneficiary as its sound and video editing department manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In support of the Form I-140 the petitioner submitted a statement dated July 6, 2009, which included a brief description of the beneficiary's proposed employment as well as other relevant information concerning the petitioner's eligibility for the immigration benefit sought. The petitioner also provided supporting evidence, including the petitioner's financial and corporate documents.

The director reviewed the record and determined that the petition did not warrant approval. The director found three grounds for the petitioner's ineligibility: 1) failure to establish the beneficiary's one year of employment abroad during the requisite three-year time period; 2) failure to establish that the employment abroad was within a managerial or executive capacity; and 3) failure to establish that the proposed employment would be within a managerial or executive capacity. The director therefore issued a decision dated May 12, 2010 denying the petition.

With regard to the beneficiary's period of employment abroad, the director focused, in part, on the information the beneficiary provided on Form G-325A, Biographic Information, in which the beneficiary indicated that he was employed in the United States from March 2007 through June 2008 for an entity that does not have a qualifying relationship with the petitioner. The director further observed that the beneficiary commenced his U.S. employment for the petitioning entity in September 2008 and therefore relied on the date of the beneficiary's change of status to that of an L-1 nonimmigrant as the basis for determining which three-year period would apply as the qualifying period of the beneficiary's one year of employment abroad. Given that the beneficiary's change of status was approved on September 15, 2008, the director determined that the petitioner must establish that the beneficiary was employed abroad for one year during a three year period that commenced on September 15, 2005. The director concluded that the beneficiary's initial entry into the United States as a B-2 visitor for pleasure on February 11, 2006 and subsequent change of status to that of an E-2 nonimmigrant precluded the beneficiary from maintaining continued employment abroad for a one-year period that commenced on September 15, 2005. The director determined that, at most, the beneficiary was employed abroad for approximately five months during the required one-year period.

On appeal, counsel submits a brief in which she disputes the denial, contending that the beneficiary was employed abroad until November 30, 2006 and that the beneficiary therefore satisfies the criterion concerning the time period of employment abroad.

The AAO finds that counsel's assertions are not persuasive and fail to overcome the director's denial. The petitioner's submissions have been reviewed. All relevant documentation that pertains directly to the key issue in this matter will be fully addressed in the discussion below.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The primary issue to be addressed in this proceeding is the beneficiary's time period of employment abroad with the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(3)(i) states, in part, the following:

- A) If the alien is outside the United States, in the three years preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity[.]

The clear language of the statute indicates that the relevant three-year period is that "preceding the time of the alien's application for classification and admission into the United States under this subparagraph." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The statute, however, is silent with regard to aliens who have already been admitted to the United States in a nonimmigrant classification. In promulgating the regulations on section 203(b)(1)(C) of the Act, the legacy Immigration and Naturalization Service (INS) concluded that it was not the intent of Congress to exclude L-1A multinational managers or executives who

had already been transferred to the United States from this employment-based immigrant classification. Specifically, INS stated the following with regard to the interpretation of the Congressional intent behind the relevant statutory provisions:

The Service does not feel that Congress intended that nonimmigrant managers or executives who have already been transferred to the United States should be excluded from this classification. Therefore, the regulation provides that an alien who has been a manager or executive for one year overseas, during the three years preceding admission as a nonimmigrant manager or executive for a qualifying entity, would qualify.

56 Fed. Reg. 30703, 30705 (July 5, 1991).

For those aliens who are currently in the United States in L-1A status, the relevant time period mentioned in the statute should be the three-year period preceding the time of the alien's application and admission as (or change of status to) an L-1A multinational managerial or executive classification.

The record shows that the petitioner last entered the United States on [REDACTED] as a B-2 nonimmigrant visitor for pleasure. Although the beneficiary subsequently obtained a change of status to that of an E-2 nonimmigrant, he did so for the purpose of being employed by [REDACTED] a U.S. entity that does not have a qualifying relationship with the petitioner. Thus the beneficiary did not originally enter the United States for the purpose of "working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas." The record shows that on September 15, 2008 the beneficiary's status was changed once again—this time to that of an L-1 nonimmigrant—so that the beneficiary could be employed in the United States at the petitioner's branch office in California. Therefore, while the dates of the beneficiary's initial U.S. entry and subsequent change of status to that of an E-2 nonimmigrant do not fit the criterion described in 8 C.F.R. § 204.5(j)(3)(i)(B), the beneficiary's latest change of status to that of an L-1 nonimmigrant does fit such criterion, as the L-1 status was obtained for the purpose of "working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas."

Notwithstanding the above determination, which allows the beneficiary's period of employment abroad to be analyzed under the provisions described at 8 C.F.R. § 204.5(j)(3)(i)(B), rather than those described at 8 C.F.R. § 204.5(j)(3)(i)(A), which states that the relevant three-year time period is that which falls within the three years prior to the filing of the instant petition, the petitioner does not meet the applicable criterion. As properly determined by the director, the beneficiary's February 11, 2006 entry into the United States interrupted the beneficiary's employment abroad, which the beneficiary did not resume subsequent to the initial entry. Therefore, in calculating the time period between February 11, 2006—the date of the beneficiary's entry—and September 15, 2005—the commencement of the relevant three-year time period—the beneficiary was employed abroad with a qualifying entity for less than five months.

Although counsel claims on appeal that the beneficiary was employed by the foreign entity until November 30, 2006, this claim is not substantiated by the evidence of record, which includes a photocopy of the beneficiary's Form I-94 showing that the beneficiary entered the United States on February 11, 2006. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19

I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, while counsel challenges the director's use of the words "technically employed" in reference to the beneficiary's vacation and/or leave of absence, the AAO finds that the director's reasoning was sound. The director properly excluded the time commencing with the beneficiary's departure from [REDACTED] and his subsequent long-term absence from the calculation of his time period of foreign employment. While brief trips to the United States for business or pleasure may not be considered an interruption of a beneficiary's employment abroad, such periods of absence will not be counted toward fulfillment of that one-year period. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

Counsel appears to have focused on the date the beneficiary actually gave the overseas company his final notice of departure as the date that the beneficiary's employment with the foreign entity was terminated. *See id.* Based on this faulty logic, counsel implies that the beneficiary continued his employment abroad until he gave official notice of his departure. The fact that the beneficiary ultimately made his decision to leave his employment abroad on November 30, 2006 does not establish that he was actively employed with the foreign entity abroad until such date. The beneficiary was obviously not employed abroad while being physically present in the United States after February 11, 2006. Counsel has provided no statutory or regulatory provision, nor a precedent case law finding to support her legal interpretation. Therefore, based on the finding that the petitioner has failed to establish the beneficiary's one year of employment abroad with the qualifying entity during the requisite three-year time period, the AAO concludes that the petitioner is not eligible for the immigration benefit sought herein and the director's decision will be affirmed.

Finally, in light of the adverse finding with regard to the regulatory criterion discussed above, the AAO finds that there is no need to explore the two remaining issues concerning the beneficiary's qualifying employment with the U.S. and foreign entities.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.